

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CALVIN JAMES HINES,

Plaintiff,

v.

ASOTIN COUNTY and the ASOTIN  
COUNTY BOARD OF  
COMMISSIONERS,

Defendants.

NO. 2:20-CV-0280-TOR

ORDER GRANTING DEFENDANT  
ASOTIN COUNTY'S MOTION TO  
DISMISS

BEFORE THE COURT is Defendant Asotin County's Motion to Dismiss

(ECF No. 8). This matter was submitted for consideration without oral argument.

The Court has reviewed the record and files herein, and is fully informed. For the  
reasons discussed below, Defendant Asotin County's Motion to Dismiss (ECF No.

8) is **GRANTED**.

**BACKGROUND**

This case arises from services made by an attorney who is not licensed to  
practice law in Washington State.

1 On August 12, 2020, Plaintiff filed his Complaint with this Court. ECF No.  
2 1. On August 28, 2020, Defendant Asotin County filed the instant Motion to  
3 Dismiss itself and the Asotin County Board of Commissioners under Federal Rule  
4 of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be  
5 granted. ECF No. 8. Represented by counsel, Plaintiff had 21 days to respond to  
6 the Motion. LCivR 7(c)(2)(B)(ii). Plaintiff failed to file any response. The  
7 following facts are drawn from Plaintiff's Complaint and construed in the light  
8 most favorable to Plaintiff. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir.  
9 2000).

10 On or about September 22, 2017, Plaintiff Calvin James Hines was charged  
11 with two felony charges in the Superior Court of Washington for Asotin County.  
12 ECF No. 1 at 3-4, ¶ 9. On account of Plaintiff's indigence, the Superior Court  
13 appointed Mr. Robert Van Idour to represent Plaintiff. ECF No. 1 at 4, ¶ 11. At  
14 the time Defendants awarded Mr. Van Idour the indigent defense contract, Mr. Van  
15 Idour was not licensed to practice law in the State of Washington and was not a  
16 member in good standing with the Washington State Bar Association. ECF No. 1  
17 at 4-5, ¶¶ 12-14.

18 Upon the advice of Mr. Van Idour, Plaintiff pled guilty to the two felony  
19 charges and was sentenced to incarceration in state prison for 19 months. ECF No.  
20

1 at 7, ¶ 21. Plaintiff completed his term of incarceration and learned that Mr. Van  
2 Idour was not licensed to practice law. *Id.*

3 Plaintiff filed the present suit under 42 U.S.C. § 1983, claiming that  
4 Defendants violated his Sixth and Fourteenth Amendment rights to effective  
5 assistance of counsel. ECF No. 1 at 8, ¶ 26. These allegations are based on Mr.  
6 Van Idour's lack of license and failure to raise defenses that could have been  
7 pursued for the two underlying felony charges. ECF No. 1 at 6, ¶¶ 17-19.

## 8 DISCUSSION

### 9 A. Failure to Respond

10 Under this District's Local Rules, failure to comply with filing deadlines  
11 "may be deemed consent to the entry of an order adverse to the party who violates  
12 these rules." LCivR 7(e). In the Ninth Circuit, a district may grant a motion to  
13 dismiss as unopposed pursuant to a local rule that permits the granting of a motion  
14 for failure to respond. *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). To  
15 dismiss an action for failure to comply with local rules, the Court must weigh the  
16 following factors: "(1) the public's interest in expeditious resolution of litigation;  
17 (2) the court's need to manage its docket; (3) the risk of prejudice to the  
18 defendants; (4) the public policy favoring disposition of cases on their merits; and  
19 (5) the availability of less drastic sanctions." *Hernandez v. City of El Monte*, 138  
20 F.3d 393, 399 (9th Cir. 1998) (internal quotation omitted).

1       Here, the factors weigh in favor of dismissal where Plaintiff, who is  
2 represented by counsel that is on notice of the Local Rules, failed to respond by a  
3 deadline that is more than a month overdue. The first two factors weigh in favor of  
4 dismissal as the public always has an interest in expeditiously resolving this  
5 litigation and the Court has an interest in managing the docket. *See Yourish v. Cal*  
6 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999). The third factor, the risk of  
7 prejudice to defendants, is weighed in connection to Plaintiff's reason for default;  
8 as Plaintiff has provided no excuse, the Court finds that there is sufficient prejudice  
9 to Defendants that strongly favors dismissal. *Id.* at 991-992. The fourth and fifth  
10 factors are outweighed by the three preceding factors that strongly support  
11 dismissal. *Id.* at 992. Thus, dismissal is appropriate for Plaintiff's failure to  
12 respond.

13           **B. Motion to Dismiss**

14       Nevertheless, the Court will consider the merits of Defendant Asotin  
15 County's Motion. Defendant Asotin County moves to dismiss Plaintiff's  
16 complaint, arguing: (1) Plaintiff's ineffective assistance of counsel claims under  
17 the Sixth and Fourteenth Amendments are barred where Plaintiff fails to show that  
18 his underlying convictions were overturned or invalidated; and (2) Plaintiff's  
19 claims against Defendant Asotin County Board of Commissioners must fail as it is  
20 not a "person" within the meaning of 42 U.S.C. § 1983. ECF No. 8 at 4-8.

1       Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may  
2 move to dismiss the complaint for “failure to state a claim upon which relief can be  
3 granted.” “The burden of demonstrating that no claim has been stated is upon the  
4 movant.” *Glanville v. McDonnell Douglas Corp.*, 845 F.2d 1029 (9th Cir. 1988).  
5 A motion to dismiss for failure to state a claim will be denied if the plaintiff alleges  
6 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
7 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*  
8 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

9       While the plaintiff’s “allegations of material fact are taken as true and  
10 construed in the light most favorable to the plaintiff[,]” the plaintiff cannot rely on  
11 “conclusory allegations of law and unwarranted inferences [] to defeat a motion to  
12 dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399,  
13 1403 (9th Cir. 1996) (citation and brackets omitted). That is, the plaintiff must  
14 provide “more than labels and conclusions, and a formulaic recitation of the  
15 elements.” *Twombly*, 550 U.S. at 555. When deciding, the Court’s review is  
16 limited to the complaint, documents incorporated into the complaint, and judicial  
17 notice. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th  
18 Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322  
19 (2007)).

1       In order to establish a § 1983 claim for unconstitutional conviction or  
2 imprisonment, the “plaintiff must prove that the conviction or sentence has been  
3 reversed on direct appeal, expunged by executive order, declared invalid by a state  
4 tribunal authorized to make such determination, or called into question by a federal  
5 court’s issuance of a writ of habeas corpus[.]” *Heck v. Humphrey*, 512 U.S. 477,  
6 486-87 (1994). Thus, in order to recover damages, the plaintiff must show that the  
7 conviction has been invalidated. *Trimble v. City of Santa Rosa*, 49 F.3d 583, 585  
8 (9th Cir. 1995). Here, Plaintiff’s ineffective assistance claims against his defense  
9 counsel “necessarily imply the invalidity” of his criminal proceedings and  
10 incarceration. *See Heck*, 512 U.S. at 487. Because Plaintiff has not alleged that  
11 his conviction has been invalidated, any claim he may have under 42 U.S.C.  
12 § 1983 for damages has not yet accrued. *See Heck*, 512, U.S. at 489-90.

13       Additionally, Plaintiff’s claims against the Defendant Asotin County Board  
14 of Commissioners are not legally cognizable as the county department does not  
15 have a “separate identity” from the county itself to qualify as a “person” under  
16 § 1983. *Brandon v. Holt*, 469 U.S. 464, 472 (1985). Therefore, Plaintiff’s claims  
17 against Defendant Asotin County Board of Commissioners must be dismissed.

18       Because Plaintiff’s filing date to respond to Defendant Asotin County’s  
19 Motion to Dismiss has now passed and Plaintiff failed to file any opposition, the  
20 Court deems Plaintiff to have consented to entry of an Order Granting Defendant

1 Asotin County's Motion to Dismiss pursuant to LCivR 7(e). Substantively,  
2 Plaintiff's complaint lacks sufficient allegations to withstand the Motion. Thus,  
3 dismissal is appropriate.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 1. Defendant Asotin County's Motion to Dismiss (ECF No. 8) is

6 **GRANTED.**

7 2. The Complaint and all claims against both named Defendants are

8 **DISMISSED** without prejudice.

9 The District Court Executive is directed to enter this Order, enter judgment  
10 accordingly, furnish copies to counsel, and **CLOSE** the file.

11 **DATED** October 19, 2020.



12 A handwritten signature in blue ink that reads "Thomas O. Rice".  
13 THOMAS O. RICE  
United States District Judge  
14